

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in the Board Room, York Hall, Yorktown, Virginia, on the ____ day of ____, 2005:

Present

Vote

James S. Burgett, Chairman
Walter C. Zaremba, Vice Chairman
Sheila S. Noll
Kenneth L. Bowman
Thomas G. Shepperd, Jr.

On motion of _____, which carried ____, the following ordinance was adopted:

AN ORDINANCE AMENDING YORK COUNTY CODE SECTION 16-41 TO INCORPORATE AMENDMENTS TO THE CODE OF VIRGINIA, DELETING THE REQUIREMENT THAT DAMAGE TO PRIVATE PROPERTY MUST BE LESS THAN \$1,000, AND ADDING A MANDATORY MINIMUM FINE OF \$500 FOR CERTAIN OFFENSES INVOLVING THE WILLFUL AND MALICIOUS DAMAGE TO OR DEFACEMENT OF PUBLIC OR PRIVATE BUILDINGS OR OTHER PROPERTY

WHEREAS, York County Code § 16-41 ("Graffiti") is based in significant part upon Code of Virginia § 15.2-1812.2; and

WHEREAS, the 2005 General Assembly adopted House Bill 1877, codified as Chapter 614 of the 2005 Acts of the General Assembly, amending in certain particulars Code of Virginia § 15.2-1812.2.

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors, this ____ day of _____, 2005, that section 16-41, York County Code, be and it is hereby amended to read and provide as follows:

Sec. 16-41. Graffiti

- (a) *Definition.* "Graffiti" shall mean the unauthorized application by any means of any writing, painting, drawing, etching, scratching or marking of an inscription, word, mark, figure or design of any type on any public or private building or

other real estate or personal property owned, operated or maintained by a governmental entity or agency or instrumentality thereof or by any private person, firm, or corporation.

(b) *Graffiti prohibited; criminal penalty.*

- (1) It shall be unlawful for any person to willfully or maliciously deface or damage by application of graffiti any public buildings, facilities or other property, ~~or any private buildings, facilities or other property if the damage to the private property is less than one thousand dollars (\$1,000.00).~~ Any person convicted of a violation of this subsection shall be guilty of a Class 1 misdemeanor. The punishment for any such violation in which the defacement is (i) more than 20 feet off the ground, (ii) on a railroad or highway overpass, or (iii) committed for the benefit of, at the direction of, or in association with any criminal street gang, as that term is defined by Code of Virginia § 18.2-46.1, shall include a mandatory minimum fine of five hundred dollars (\$500.00).
- (2) Upon a finding of guilt in any case tried before the court without a jury, in the event the violation constitutes a first offense which results in property damage or loss, the court, without entering a judgment of guilt, upon motion of the defendant, may defer further proceedings and place the defendant on probation pending completion of a plan of community service work. If the defendant fails or refuses to complete the community service as ordered by the court, the court may make final disposition of the case and proceed as otherwise provided. If the community service work is completed as the court prescribes, the court may discharge the defendant and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying the ordinance in subsequent proceedings.
- (3) Any community service ordered by the court shall, to the extent feasible, include the repair, restoration or replacement of any damage or defacement to property within the county and may include clean-up, beautification, landscaping or other appropriate community service within the county. The county administrator shall supervise the performance of any community service work required and to report thereon to the court imposing such requirement. At or before the time of sentencing under the ordinance, the court shall receive and consider any plan for making restitution or performing community service submitted by defendant. The court shall also receive and consider the recommendations of the court's supervisor of community services concerning the plan.
- (4) Notwithstanding any other provision of law, no person convicted of a violation of this ordinance shall be placed on probation or have his sentence suspended unless such person shall make at least partial restitution

for such property damage or is compelled to perform community services, or both in accordance with Code of Virginia § 19.2-305.1, as it may be amended from time to time.

- (c) *Parental liability for cost of graffiti.* In the event graffiti is applied to any public property by a minor who is living with either or both parents or a legal guardian, the county may institute an action and recover from the parents of the minor, or either of them, or from the legal guardian the costs for damages suffered by reason of the willful or malicious destruction of, or damage to, public property by the minor. The action by the county shall be subject to any limitation of the amount of recovery set forth in Code of Virginia § 8.01-43 or other applicable state law.
- (d) *Graffiti declared a nuisance.* The existence of graffiti within the county in violation of this section is expressly declared a public nuisance, and is subject to the removal and abatement procedures specified in this section.
- (e) *Removal of graffiti.*
 - (1) The county administrator is authorized to undertake or contract for the removal or repair of the defacement of any public building, wall, fence or other structure by the application of graffiti.
 - (2) The county administrator is also authorized to undertake or contract for the removal or repair of the defacement by graffiti of any private building, wall, fence or other structure visible from any public right-of-way in accordance with the following procedures:
 - a. Prior to such removal of graffiti from private property, the county administrator shall issue to the property owner, by certified mail, return receipt requested, sent to the last address listed for the owner in county property assessment records, a notice which states: the street address and legal description of the property; that the property has been determined by the county to constitute a graffiti nuisance; that the owner must take corrective action to abate the nuisance created by such graffiti within fifteen (15) days of the date of the owner's receipt of the notice or refusal of the owner to receive notice; and that if the graffiti is not removed within the 15-day period, the county will begin removal procedures, the cost of which shall be charged to the property owner, or may institute a legal action to require the property owner to remove or obscure the graffiti. Where the property owner fails to abate the nuisance within fifteen (15) days after receipt of the notice or refusal of the owner to receive notice, the county administrator is authorized to undertake efforts forthwith to remove or obscure the graffiti.

- b. Before entering upon private property for the purpose of graffiti removal, the county shall attempt to obtain the consent of the property owner, occupant or other responsible party.
 - c. In the event no owner or occupant or person responsible for the graffiti can be found to whom to direct the notice provided for in this subsection, the county, after giving fifteen (15) days notice in a newspaper having general circulation in the county, may proceed to remove or obscure the graffiti and charge the property owner for costs therefor as provided in (g) below.
- (3) Where a structure defaced by graffiti is owned by a public entity other than the county, the removal of the graffiti by the county is authorized only after securing the consent of an authorized representative of the public entity having jurisdiction over the structure.
- (4) In addition to the foregoing, the county administrator is authorized to institute appropriate legal action on behalf of the county, including but not limited to actions pursuant to Code of Virginia section 15.2-900, to compel the owner or owners of the subject property to abate or remove the graffiti at the owner's own cost.
- (f) *Emergency removal of graffiti.* If the county administrator determines that any graffiti is an immediate danger to public health, safety or welfare, then forty-eight (48) hours after the later of (1) mailing notice to the property owner or other responsible party, as provided above and (2) posting notice in a conspicuous place on the property, the county may remove or cause the graffiti to be removed. The county may bring an action against the property owner or other responsible party to recover the necessary costs reasonably required to remove or obscure the graffiti.
- (g) *Assessment of costs against property owner for removal of graffiti.*
- (1) If the county undertakes corrective action to remove graffiti from private property after complying with the notice provisions of subsection (e)(2) above, the total cost for such removal and related repairs shall be chargeable to and paid by the property owner, and may be collected as a special assessment against the respective lot or parcel of land to which it relates in the manner in which county taxes and levies are collected.
 - (2) Every charge authorized by this section with which the owner of any such property has been assessed and which remains unpaid shall constitute a lien against such property with the same priority as liens for unpaid local taxes and enforceable in the same manner as such liens.
- (h) Nothing herein shall be deemed a limitation on the rights of the county to seek

and enforce the removal or obscuration of graffiti by any other means or remedies available at law or equity.

- (i) *Severability.* If any part, subsection, or sentence of this section is for any reason determined by a court of law to be unconstitutional or invalid, such decision shall not affect the remaining portions of this section.

This ordinance shall be effective as of July 1, 2005.